

ATTACHMENT G

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Honorable Karen A. Overstreet
 Chapter 11
 Hearing Location: Seattle, Room 7206
 Hearing Date: Friday, August 26, 2011
 Hearing Time: 9:30 a.m.
 Response Date: Friday, August 19, 2011

7 UNITED STATES BANKRUPTCY COURT
 8 WESTERN DISTRICT OF WASHINGTON
 9 AT SEATTLE

10 In re:

11 MERIDIAN MORTGAGE INVESTORS FUND V, LLC,
 12 et al.

13 Debtors.¹

Case No. 10-17952
 (Jointly Administered)

TRUSTEE'S FIRST AND FINAL
 APPLICATION FOR
 COMPENSATION AND
 REIMBURSEMENT OF
 EXPENSES

14 Mark Calvert, ("Calvert") the duly appointed Chapter 11 Trustee for the Meridian Funds (the
 15 "Funds Trustee"), hereby submits this First and Final Application for Compensation and
 16 Reimbursement of Expenses in accordance with Bankruptcy Code § 330 and Local Bankruptcy Rule
 17 2016, and requests an order approving the Trustee's fees of \$310,570.00 and costs of \$58,766.95 for
 18 a total of \$369,336.95. This request is supported by the Declaration of Mark Calvert, filed
 19 contemporaneously herewith.
 20

21
 22 ¹ The Debtors are Meridian Mortgage Investors Fund V, LLC (Case No: 10-17952); Meridian Mortgage Investors Fund II, LLC (Case
 23 No: 10-17976); Meridian Mortgage Investors Fund VII, LLC (Case No: 10-17953); Meridian Mortgage Investors Fund VIII, LLC,
 24 (Case No: 10-17958); Meridian Mortgage Investors Fund VI, LLC (Case No: 10-18729); Meridian Mortgage Investors Fund IX, LLC,
 25 (Case No: 10-18727); Meridian Mortgage Investors Fund X, LLC (Case No: 10-18728); Meridian Real Estate Opportunity Fund I,
 26 LLC (Case No: 10-19645); Meridian Real Estate Opportunity Fund II, LLC (Case No: 10-19644); Meridian Mortgage Investors Fund
 I, LLC, (Case No: 11-10830); Meridian Mortgage Investors Fund III, LLC (Case No: 11-10833); and MPM Investor Services Inc.,
 (Case No: 11-10834). Under previous Court Orders, the Cases have been jointly administered and Mark Calvert has been appointed
 Trustee over all the Cases.

TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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CASE OVERVIEW

The Meridian Funds Trustee is the appointed Chapter 11 Trustee for eleven real estate investment funds (the "Funds") which are currently Debtors in pending Chapter 11 proceedings in the United States Bankruptcy Court for the Western District of Washington. Each of the Funds was established and controlled by Frederick Darren Berg ("Berg")². Berg held a sole or majority ownership interest in all of the Funds and maintained sole and exclusive control of the Funds either individually or by virtue of his control of Meridian Partnership Management, an affiliated management company, prior to the institution of these bankruptcy cases. Berg conducted the business of the Funds as a Ponzi scheme. The Trustee has diligently fulfilled his responsibilities to investigate the financial affairs of the Funds and the fraud perpetrated by Berg as manager of the Funds. The Trustee has effectively communicated with a large creditor body through monthly newsletters, hosted webinars and two large creditor presentations held at University of Washington's Kane Hall and the Cinerama Theatre.³ The Trustee worked collaboratively with the Official Consolidated Investors' Committee (the "Committee") to successfully propose a Plan of Liquidation (the "Plan") which substantively consolidated all of the Funds and dramatically reduced the need for litigation regarding Ponzi clawback issues. The Plan was unanimously approved by creditors. The Plan became effective on July 7, 2011. All assets of the substantively consolidated estates have been contributed to a liquidating trust for the benefit of creditors of the estates, including the administrative creditors. Mark Calvert has been appointed the Liquidating Trustee of the Liquidating Trust.

The Trustee's investigation of fraud is described in more detail in the First and Final Application for Compensation of Cascade Capital Group, LLC as Forensic Accountants for the

² On August 2, 2011, Berg plead guilty to felony charges of wire fraud, money laundering and bankruptcy fraud.

³ More than 700 creditors filed more than 1500 claims in these cases. Total investments in the Funds are alleged to be more than \$210 million.

TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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1 Trustee. However, immediately upon his appointment, the Trustee had a meeting with Berg, his
 2 criminal attorney, the Federal Bureau of Investigation and the Department of Justice. In the meeting
 3 Berg disclosed that he used the Funds' cash to fund the cash needs of his companies including but
 4 not limited to buying buses and funding the operating losses of the bus companies from 2003 until
 5 2010. Mr. Berg also disclosed that he used the Funds' cash to support his lavish life style. The
 6 Trustee initiated an investigation of the Funds' financial condition and pre-bankruptcy conduct in
 7 which he obtained and reviewed almost 75% of the bank accounts and over 85% of the Funds' and
 8 MPM bank account records, the financial and accounting records of the Funds and other companies
 9 controlled by Berg, and the records related to the assets owned by each Fund. Based on his review
 10 of these records, the Trustee discovered that at least as early as 2001 Berg began directing cash
 11 and/or assets from the Funds to other operating companies owned by Berg, including a luxury
 12 charter bus business (described further below), a "green" home construction business, and certain
 13 software companies. Additionally, Berg diverted Funds' cash toward financing his lifestyle,
 14 including personal residences, two airplanes, two yachts, and artwork.

15 Given the "spider web" nature of the relationships between the companies controlled by
 16 Berg, and the extensive co-mingling of assets, it was difficult to ascertain the precise amount of
 17 monies taken from the Funds by Berg and/or MPM at Berg's direction. The Trustee's determined
 18 that the minimum amount diverted was \$76,933,068 from 2006 to 2010⁴. The intricate and
 19 extensive commingling of assets led to the Trustee's decision to propose a plan calling for
 20 substantive consolidation of the Funds.

21 The Trustee also discovered that many of the "assets" of the Funds, i.e., notes secured by real
 22 property collateral, were fictitious, and in many instances Berg, either individually or in his capacity
 23 as an officer of MPM, generated counterfeit documents to evidence purported assets. A valuation
 24

25 ⁴ This figure is comprised solely of the transfers from the Funds to Berg that exceeded \$20,000, and does not include any
 26 transfers below that amount. The Trustee reserves the right to amend this figure. The Trustee believes that there are
 considerable transfers which occurred prior to 2006.

TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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1 analysis done by Deloitte Financial Advisory Services, LLP at the end of 2009 states by way of
 2 background information, that the Funds held 2,348 mortgages with an unpaid principal of
 3 approximately \$191.5 million. At the time of the Trustee's appointment in July, 2010, the Funds, in
 4 reality, owned less than 200 mortgages with a principal balance of less than \$11 million and real
 5 estate owned with a value of approximately \$4 million.

6 The Trustee has focused his efforts to date on the preservation of the real estate loan and real
 7 estate assets of the estate, the investigation of the financial affairs of the estates, confirmation of the
 8 Plan, and resolution of the significant disputes between the Funds' estates and the bankruptcy estates
 9 of Berg and bus company affiliates. Through a judicial settlement conference held on May 26, 2011,
 10 the Trustee reached a settlement with the Berg Trustee, subject to court approval, which globally
 11 resolves all outstanding issues between the Funds estates and the Berg and Berg Entities estates.
 12 The hearing on approval of the proposed settlement is currently set for hearing on August 26, 2011.

13 FACTS

14 **1. Dates of Appointment of Trustee and Administrative Duties.**

15 On July 9, 2010, involuntary bankruptcy petitions were filed by certain creditors against
 16 Meridian Mortgage Investors Fund II, LLC ("Investment Fund 2"), Meridian Mortgage Investors
 17 Fund V, LLC ("Investment Fund 5"), Meridian Mortgage Investors Fund VII, LLC ("Investment
 18 Fund 7"), and Meridian Mortgage Investors Fund VIII, LLC ("Investment Fund 8"). In light of the
 19 interrelatedness of factual circumstances and legal issues, Meridian Mortgage Investors Fund VI,
 20 LLC ("Investment Fund 6"), Meridian Mortgage Investors Fund IX, .LLC ("Investment Fund 9"),
 21 and Meridian Mortgage Investors Fund X, LLC ("Investment Fund 10") filed voluntary chapter 11
 22 bankruptcy petitions on July 28, 2010. Similarly, on August 17, 2010, Meridian Real Estate
 23 Opportunity Fund I LLC ("Opportunity Fund I") and Meridian Real Estate Opportunity Fund II LLC
 24 ("Opportunity Fund 2") also filed voluntary chapter 11 bankruptcy petitions. On January 27, 2011,
 25 Meridian Mortgage Investors Fund I, LLC ("Investment Fund 1 "), Meridian Mortgage Investors
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TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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1 Fund III, LLC ("Investment Fund 3") and MPM Investor Services, Inc. filed voluntary Chapter 11
 2 bankruptcy petitions. Investment Funds 1, 2, 3, 5, 6, 7, 8, 9, 10, and Opportunity Funds 1 and 2 and
 3 MPM Investor Services, Inc. are referred to collectively as the "Debtors."

4 On July 20, 2010, the US Trustee appointed Mark Calvert of Cascade Capital Group as
 5 Chapter 11 Trustee for Investment Funds 2, 5, 6, 7 and the Court entered an order approving the
 6 appointment on the same day. On August 4, 2010, Calvert was appointed the Trustee for Investment
 7 Funds 6, 9, and 10. On September 3, 2010, Calvert was appointed the Trustee for Opportunity Fund
 8 1 and 2. On March 4, 2011, Calvert was appointed the Trustee for Investment Fund 1 and 3 and
 9 MPM Investor Services, Inc.

10 The Trustee has faithfully performed all the administrative duties of the Trustee, including
 11 but not limited to preparing bankruptcy schedules and statements of financial affairs for the Meridian
 12 Fund cases; preparing monthly financial reports; responding to the informational requests of the
 13 Department of Justice and Federal Bureau of Investigation; reviewing the over 1500 investor filed
 14 claims; and interfacing with the more than 700 creditors of the Funds.

15 On August 30, 2010, the Funds Trustee held an investor meeting at the University of
 16 Washington, Kane Hall to inform investors of his preliminary findings regarding the financial affairs
 17 of the Funds. At the Kane Hall presentation, the Trustee informed investors of his preliminary
 18 conclusion that the investors had been victims of a Ponzi scheme. The Trustee estimated the
 19 professional fees and expenses necessary to the administration of the estates at approximately \$5
 20 million. The Trustee and his professionals and the counsel for the Committee have filed final fee
 21 applications in the consolidated cases seeking a total of \$2,832,060.92 in fees and \$109,582.94 in
 22 costs for a total of \$2,941,643.86.

23 On May 3, 2011, the Court approved the Disclosure Statement for Chapter 11 Trustee's and
 24 Official Consolidated Investors' Committee's Joint Plan of Liquidation. On May 17, 2011, the
 25 Funds Trustee conducted his second investors' meeting to answer questions regarding the proposed
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TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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1 Plan. On June 22, 2011, the Court confirmed the Plan, based upon the unanimous consent of
2 creditors.

3 **2. Statements of Prior Compensation and Itemized Time Records.**

4 True and correct copies of the Funds Trustee's billing statements are attached to the
5 Declaration of Mark Calvert in Support of this Application, filed contemporaneously herewith. The
6 billing statements contain itemized time records which include the date the service was rendered, the
7 identity of the person providing the services, a detailed description of the services performed and the
8 total hours and amount of compensation requested. This application is the first request for approval
9 of compensation and reimbursement of expenses. The Trustee has received no prior compensation
10 in the case.

11 **3. Source of Payment and Amount of Unencumbered Funds.**

12 Pursuant to the Plan, all assets of the estates have been transferred to a Liquidating Trust for
13 the benefit of creditors including administrative creditors of the estate. As of June 30, 2011, the
14 Trust held cash in the amount of \$1,514,429.30. The Trustee has moved for approval of a settlement
15 with the Berg Trustee on terms which will bring more than \$5 million in cash and cash equivalents
16 into the Liquidating Trust within thirty days of approval of the settlement. The Trust also holds
17 loans with an estimated value of approximately \$9 million and real estate with an estimated value of
18 approximately \$2.7 million. In addition, the Trust holds certain claims and causes of action which
19 the Trustee estimates will result in an additional approximately \$8 million in recoveries for the
20 benefit of creditors. The Trustee anticipates total distributions to creditors of \$20.4 million to \$27.6
21 million.

22 **4. Other Employed Professionals.**

23 The following professionals have been employed by Court order to render services to the
24 Estates: K&L Gates LLP, counsel for the Chapter 11 Trustee; Cascade Capital Group, LLC,
25 forensic accountants for the Chapter 11 Trustee; Foster Pepper PLLC, attorneys for the Official
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TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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1 Consolidated Investors Committee; and WTAS LLC, tax consultants to the Official Consolidated
2 Committee.

3 **5. Calculation of Trustee Cap on Compensation.**

4 Pursuant to 11 U.S.C §326, the Trustee's compensation in this case is capped at approximately
5 \$830,385, presuming distributions of \$27.6 million and would be capped at \$614,200 based on the
6 \$20.4 million in hard assets to be distributed to creditors. The fees applied for by the Trustee are
7 significantly below the statutory cap.

8 **CONCLUSION**

9 The Trustee believes that the work he performed was necessary to the responsible
10 administration of the Estates, was performed in a professional manner and provided benefit to the
11 Estates and creditors. The Trustee believes that the fees and costs are reasonable under the
12 circumstances of this case. The Trustee has not shared or agreed to share any compensation in this
13 case other than is allowed by the Bankruptcy Code. Based on the above, the Trustee requests that its
14 Application be allowed and compensation paid for professional services rendered as set forth herein.

15 DATED this 9th day of August, 2011.

16 K&L GATES LLP

17
18 By /s/ Michael J. Gearin
19 Michael J. Gearin, WSBA # 20982
20 David C. Neu, WSBA #33143
21 Attorneys for Mark Calvert, Trustee
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TRUSTEE'S FIRST AND FINAL APPLICATION FOR
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